IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8066 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHINUBHAI BALUBHAI NAYAKA

Versus

COMMISSIONER OF POLICE SURAT CITY

Appearance:

1. Special Civil Application No. 8066 of 2004

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

MS HB PUNANI, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 06/12/2004

ORAL JUDGEMENT

1. Heard ld. counsel Mr. Kamlesh Kachhavah for ld. counsel Ms. DR Kachhavah for the petitioner. By this petition under Article 226 read with Articles 21 & 22(5) of the Constitution of India, the petitioner detenu has challenged the legality and validity of the order of detention dated 16.04.2004 passed by the Police Commissioner, Surat City in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) against the petitioner-detenu. The petitioner detenu has been branded as "boot-legger" as defined under Sec.2(b) of the PASA Act..

2. The grounds for detention supplied to the detenu petitioner indicate that the petitioner was found involved in solitary single offence punishable under Sections 66B, 65AE, 81 of the Bombay Prohibition Act being Udhana Pro.Police Station III CR No. 156/2004, wherein 1200 bottles of liquor worth Rs.36,000/ was recovered. It is recorded by the authority that the petitioner is a "boot-legger" and is involved in the activities dangerous to the society. Of course, the detaining authority has considered statements of two witnesses recorded by the sponsoring authority on 27.03.2004 and verified by the detaining authority on 15.04.2004.

3. The petitioner has challenged the legality and validity of the order of detention on number of grounds as mentioned in the memo of the petition. Ld. counsel Mr. Kachhavah for the petitioner, has taken this Court through the contentions raised in the petition. However, he has focussed his arguments mainly on three grounds. The first ground pressed into service by ld. counsel Mr. Kachhavah is that the petitioner has been wrongly branded as "bootlegger" and his activities are dangerous to maintenance of public order, as he was involved in solitary offence under Bombay Prohibition Act. The second ground pressed into service is that as per the settled legal position of the decision of the Apex Court in the case of Sohanlal Surajram Visnoi v/s State of Gujarat & Ors., 2004(2) GLR 1051, the impugned order of detention requires to be quashed as the case the present case is squarely covered by the ratio of the aforesaid decision.

5. I have gone through the above-cited decision. For the sake of convenience, I would like to quote relevant paras 4 & 5 of the said decision:-

"4. Article 22(3) of the Constitution of India expressly provides that the safeguards contained in Art.22(1) and 22(2) of the Constitution are not to apply to preventive detention. Article 22(4) of the Constitution provides and opens with double negative, put in positive form, and in its real substance, means that a law which provides for preventive detention for a period longer than three months, shall contain all the provisions prescribed in clauses (4) and (5) of Article 22 of the Constitution. Article 22(5) of the Constitution prescribes that when any person under a preventive detention law is detained, the authority making the order, shall as soon as may be, communicate to such person, the grounds on which the order has been made, and shall afford him with the earliest opportunity of making a representation against the order. Article 22(5) of the Constitution is of general importance and operation in respect of every detention order made under any preventive detention law.

5. In this group of petitions, all the detenus, except one in Special Civil Application No.825 of 2003, are treated and described as "bootleggers" as defined under Sec.2(b) of the P.A.S.A. Act and only one offence is registered against each detenu under the provisions of the Bombay Prohibition Act, 1949. Whereas in Special Civil Application No.825/2003, the detenu is treated as "dangerous person" as defined in Sec.2(c) of the P.A.S.A. Act, and in this case also, a solitary incident is made basis for passing the detention order against him."

6. The next ground pressed into service by ld. counsel Mr. Kachhavah for the petitioner detenu is that the subjective satisfaction of the detaining authority has been recorded mechanically. He has submitted that verification of the statements of witnesses was made on 15.04.2004 and the impugned order of detention is passed on 16.04.2004. So, in view of above, the ratio of decision of this Court in the case of Ranubhai Bharwad (Vekaria) v/s State of Gujarat & Ors., 2000(3) GLR 2696 would help the petitioner. It is not necessary to reproduce relevant para-9 of the said decision, but in the facts and circumstances of the case, I am of the opinion that the ratio of the above-cited decision would squarely cover the case of the present petitioner and hence petition requires to be allowed.

7. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 16.04.2004 passed by the Police Commissioner, Surat City is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

[C. K.BUCH, J]

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